

REMARKS

The pending Office Action addresses and rejects claims 1-8, 10-14, 16-21, 23-27, and 29-33. Claims 29-31 were previously withdrawn from consideration. Reconsideration is respectfully requested in view of the above amendments and following remarks.

Applicants respectfully request that the claims as amended be entered for examination pursuant to MPEP §§ 714.12-13. Applicants consider that in view of these amendments and the arguments set forth below, the application is in condition for allowance. In the alternative, if the claims are not found to be in condition for allowance, the amendments would place the claims in better condition for appeal.

Amendments to the Claims

Claim 1 is amended to clarify that the scaffold comprises a dry laid nonwoven polymeric material, the dry laid nonwoven polymeric material having a density in the range of about 120 mg/cc to 360 mg/cc. Support for this amendment can be found throughout the specification, for example, at Paragraph 0048 of the published application. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 103

The Examiner continues to reject claims 1-8, 10-14, 16-21, 23-27, and 32-33 pursuant to 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0127265 of Bowman et al. ("Bowman") and International Patent Publication No. WO 01/85226 of Huckle et al. ("Huckle") as exemplified by Boland et. al. (*J. Macromol. Sci.-Pure Appl. Chem.*, 2001, A38(12), p 1231-1243) ("Boland"). Applicants respectfully disagree.

Independent claims 1 and 19 each recite, in part, that the scaffold includes a "nonwoven polymeric material having a density in the range of about 120 mg/cc to 360 mg/cc." Neither Bowman nor Huckle, whether taken alone or in combination, teaches or suggests a nonwoven polymeric material that has the claimed density range. The Examiner continues to argue that "density limitations within the claimed range of 120 mg/cc...are taught by [Huckle] at page 21, line 34." The Examiner is incorrect. Huckle in fact discloses a "needled felt" with "a density of 93 mg/cm³." Huckle at page 21, lines 14-15. Although Huckle later discloses a *scaffold* with "a density of 120 mg/cm³," the difference in density

between the felt material and the scaffold results from a PCL coating that is added to the felt. However, Applicants' claims require a nonwoven material having a certain density, i.e., the material itself has the claimed density, not the material plus a coating that increases the density. Huckle's nonwoven material, i.e., the needled felt, simply does not have a density in the claimed range. In fact, the claimed density is between 30% and 400% higher than the density of the needled felt disclosed by Huckle. Huckle therefore fails to teach or suggest a nonwoven polymeric material having a density in the range of about 120 mg/cc to 360 mg/cc.

Bowman also fails to teach or suggest a nonwoven material having a density in the claimed range. In fact, Bowman fails to provide any teaching or suggestion regarding the density of a nonwoven material except for a "mesh material" that is disclosed as being a "low density, or open knitted mesh material." Bowman at paragraph 0066. Moreover, Bowman is directed to scaffold including foam reinforced with a mesh material that has an open structure so that the foam can penetrate the mesh. See Bowman at paragraph 10, FIG. 6. Thus, Bowman fails to teach or suggest a nonwoven material having the claimed density range.

The combination of Bowman and Huckle therefore fails to teach or suggest Applicants' claimed invention. In particular, the combination of Bowman, which lacks any teaching of a density range, and Huckle, which discloses a density lower than the claimed range, fails to teach or suggest a scaffold including a nonwoven polymeric material having a density in the range of about 120 mg/cc to 360 mg/cc, as required by independent claims 1 and 19.

Accordingly, claims 1 and 19 distinguish over the combination of Bowman and Huckle and represent allowable subject matter. Claims 2-8, 10-14, 16-18, 20, 21, 23-27, and 32-33, which depend from claims 1 and 19, distinguish over the cited art at least because they depend from an allowable base claim.

Obviousness-Type Double Patenting Rejections

The Examiner provisionally rejects claims 1-8, 10-14, 16-27, and 32-33 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-14, 17-29, and 32 of co-pending Application No. 11/427,477. The Examiner also provisionally rejects claims 1, 7, 10-14, 19, and 34-27 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 8-11 of co-pending Application No.

11/856,743. The Examiner also provisionally rejects claims 1, 7, 8, 19, 24-27, 32, and 33 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1, 5, 7-9, 12, and 13 of co-pending Application No. 11/856,741.

Applicants believe that all pending claims are allowable. Applicants will file appropriate terminal disclaimers if so warranted. The instant application, however, was filed earlier than the applications that form the basis of the non-statutory double patenting rejections, and thus the Examiner should withdraw the provisional rejections and permit this application to issue as a patent without a terminal disclaimer (MPEP §804).

Conclusion

Applicants submit that all pending claims are allowable, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed necessary to expedite prosecution of this application.

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Respectfully submitted,

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